

York, and charging adulteration and misbranding in violation of the Food and Drugs Act, as amended.

Analysis of a sample of the product by the Bureau of Chemistry of this department showed that it consisted in part of synthetic methyl salicylate.

Adulteration of the article was alleged in the libel for the reason that it was sold under and by a name recognized in the United States Pharmacopœia, which differed from the standard of strength, quality, and purity as determined by the test laid down in said Pharmacopœia, in that a substance, synthetic methyl salicylate, had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength, and had been substituted in part for oil of sweet birch, which the article purported to be.

Misbranding of the article was alleged for the reason that it was an imitation of, and was offered for sale under the name of, another article, and in that the statement, "Oil of Sweet Birch," was false and misleading, and deceived and misled the purchaser.

On October 10, 1918, the said E. E. Dickinson & Co., claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of \$2250, in conformity with section 10 of the act, conditioned in part that the product should be relabeled under the supervision of a representative of this department.

C. F. MARVIN, *Acting Secretary of Agriculture.*

6874. Alleged adulteration of milk. U. S. * * * v. Gustave Tetz, Alfred Tetz, and William Tetz, jr. (Tetz Brothers). Tried to the court and a jury. Verdict for the defendant. (F. & D. No. 9230. I. S. No. 16044-p.)

On December 13, 1918, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Gustave Tetz, Alfred Tetz, and William Tetz, jr., trading as Tetz Brothers, Ridgefield, Wash., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about February 20, 1918, from the State of Washington into the State of Oregon, of a quantity of milk which was alleged to have been adulterated.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

	<i>Per cent.</i>
Total solids, by drying-----	10.99
Fat, by Roesse Gottlieb-----	2.59
Solids, not fat-----	7.50

This analysis shows that the milk contained added water.

Adulteration of the article was alleged in the information for the reason that a substance, to wit, water, had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength, and had been substituted in part for milk, which the article purported to be.

On February 1, 1919, the case having come on for trial on a plea of not guilty, which had heretofore been entered, after submission of evidence and argument by counsel, the following charge was delivered to the jury by the court (Cushman, *D. J.*):

Gentlemen, you have had the facts thoroughly gone over before you by the arguments of different counsel, and it is the duty of the court before you go out to consider what verdict should be returned to instruct you upon the law.

This information is short. It charges the defendants with having shipped and delivered for shipment at Ridgefield, as I remember the name of the place, in the state of Washington, to be shipped to Portland, in the state of Oregon, a certain number of cans of milk which had been adulterated by having water substituted for the milk, and by having water mixed and packed with the milk, so as to decrease, lower, and injuriously affect the quality and strength of the milk.

To this information the defendants have entered a plea of not guilty. That places the burden upon the prosecution of establishing every material allegation of the information by evidence sufficient to convince you beyond a reasonable doubt. If you have a reasonable doubt concerning any material allegation of the information, it is your duty to give the defendants the benefit of the doubt and acquit them. The defendants you must consider separately; and if you have a reasonable doubt concerning the guilt of either one of the defendants, it would be your duty to give that defendant the benefit of the doubt and acquit him.

This law under which the information is drawn provides that if any person shall ship or deliver for shipment from any state to any other state any adulterated article of food he shall be punished.

Now, as I understand this testimony, there is not any particular dispute but what this milk was shipped and delivered for shipment at Ridgefield to be shipped to Portland, Oregon, that is, in interstate commerce. Of course milk is an article of food. While the defendants having entered a plea of not guilty it is necessary that all of these things should be established, yet the real dispute in the case, as I understand it, is regarding whether, if this milk had water added to it in such a way as to lower or decrease or injuriously affect its quality and strength, whether the defendants, or any of them, had knowingly caused that to be done. This statute provides that an article of food shall be deemed, for the purpose of this act, to be adulterated if any substance has been substituted for the article. It is also provided that an article of food shall be deemed, for the purpose of this act, to be adulterated if any substance has been mixed and packed with the article so as to decrease, lower, or injuriously affect its quality or strength; and it is under that law that this information is drawn.

There is no presumption arises against the defendants by reason of the fact that this information has been filed and they have been brought to trial before you. Every presumption of law is in favor of their innocence, and this presumption continues throughout the trial until such time as the evidence produced by the Government breaks down that presumption and overcomes it by establishing the truth of every material allegation beyond a reasonable doubt.

A reasonable doubt as used in this instruction means just what the two words mean. It is a doubt based upon reason; a doubt for which you can give a reason. The law does not require that before a verdict of guilty should be returned every possibility of mistake be eliminated from the case. Such degree of certainty is seldom ever arrived at in human transactions. But it does require that before you can arrive at a verdict of guilty against a defendant something more than a preponderance of the evidence should support the charge. That has been defined as beyond a reasonable doubt. A reasonable doubt has also been defined as being such a doubt as would cause a man of ordinary intelligence, discretion, decision, and sensibility to pause or hesitate in any of the more important transactions connected with his affairs. If you have such a doubt concerning one or more of the material allegations of the information, then you have a reasonable doubt, and it is your duty to give the defendants the benefit of that doubt and acquit. If you have no such doubt, it is your duty to return a verdict of guilty.

The court will read to you certain instructions that are requested [reads]:

The prosecution in this case is under what is known as the Food and Drug Act, and that part of the statute bearing on this case provides that any person who shall ship or deliver for shipment from any state to another state any food adulterated within the meaning of this act shall be guilty; and such food is adulterated within the meaning of the act, first, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength; second, if any substance has been substituted wholly or in part for the article.

The Government under this statute has charged that Gustav Tetz, Alfred Tet., and William Tetz, jr., trading as Tetz Brothers, on the 20th day of February 1918, unlawfully shipped and delivered for shipment from Ridge-

field, Washington, to Portland, Oregon, a number of cans containing milk, and that such milk when shipped and delivered for shipment was adulterated in that water had been mixed and packed with the milk so as to reduce and lower and injuriously affect its quality and strength, and that such milk was further adulterated in that added water had been substituted in part for milk, which the article purported to be. You are instructed that the burden is upon the Government to prove all these allegations beyond a reasonable doubt.

The purpose of this act was to protect purchasers from injurious deceits by the sale of inferior for superior articles, and to protect the health of the people by preventing the sale of normally wholesome articles to which have been added substance poisonous or detrimental to health. Before you can convict the defendants it must be shown both that they intentionally added and mixed water with the milk and that the effect of adding to and mixing water with the milk was to reduce and lower or injuriously affect its quality or strength, or by such substitution of water for milk they intended to deceive its purchaser into buying an inferior for a superior product. [Ends reading.]

In that connection I will instruct you that all persons are presumed to intend the natural and ordinary consequences of their voluntary acts.

[Resumes reading.] Crime or an unlawful act necessarily implies knowledge and intent. Our mistakes, accidents, and misfortunes carry a sufficient penalty of their own, and the law does not attempt to add additional punishment.

Under the information the Government charges that the Tetz Brothers unlawfully shipped and delivered for shipment from Ridgefield, Washington, to Portland, Oregon, this milk, and that such milk when shipped and delivered for shipment was then and there adulterated. By this language the Government necessarily implies that the milk must have been adulterated before the Tetz Brothers left it at the station for shipment, and the only way the Tetz Brothers could be held responsible for adulteration after its delivery at the station would have been for some third person to adulterate such milk afterwards with the knowledge and consent of said Tetz Brothers. If purposely adulterated by others without their knowledge or by accident they are not guilty.

If you find that some one else without the knowledge or consent of the said Tetz Brothers mixed water with this milk or removed some of the milk from the cans and substituted water therefor, then you must find the defendants not guilty; because the defendants are not responsible for the acts of third persons over whom they have no control.

If you find that the defendants did not adulterate this milk by the addition of water or by removing some of the milk from the cans and substituting water therefor, and that no one else so adulterated such milk with the knowledge and consent of the defendants, then the said defendants are not guilty as charged.

If you find that such tests are below normal and that the lowness of such tests are due to natural and not to any human agency, then such milk would not be adulterated as charged by the information and the defendants are not guilty.

You are instructed that this is not a prosecution of the defendants merely because their milk fell below some particular standard whether fixed by United States regulations or state law, and the fact that on some particular day their milk fell below such standard tests would not make them guilty; but the question for you to determine is whether they, by themselves or through some third person, added artificially water to this milk or shipped it after they knew it had been so watered. [Concludes reading.]

You are in this case, as in every case where questions of fact are submitted to a jury for determination, the sole and exclusive judges of every question of fact, the weight of the evidence, and the credibility of the witnesses. As I have instructed you in other cases, in determining the credit to be given to the different witnesses and in determining what the facts are from the evidence, you should closely heed the different witnesses as they come upon the witness stand, observe their conduct, demeanor, and actions as they give their testimony, whether they impress you as showing by their manner that they were anxious to tell the truth and the whole truth, neither adding to it or taking from it, and whether they may not have impressed you as reluctant and evasive, holding back something and trying to keep from telling you all they claimed to know, or whether they may not have impressed you that they were

too willing, running along and injecting something into the case that nobody seemed to care anything about and which they were asked no questions about. You will consider the testimony of each witness as to whether it appears to be unlikely, unreasonable or improbable, and as to whether it is corroborated by other evidence where you would expect it to be corroborated if true, or whether it is contradicted by other evidence. You will also take into consideration the situation in which each witness was placed as to enabling that witness to know the exact facts; as one witness might be much better situated and located to know what the facts were than another witness who was just as anxious to tell the truth. You will also take into account the interest that each witness has in the case, as shown by his manner of testifying or his relation to the case. The defendants having taken the stand in their own behalf, you will weigh their testimony by the same rules as that of other witnesses, including their natural interest in the case.

The jury thereupon retired and after due deliberation returned a verdict of not guilty.

C. F. MARVIN, *Acting Secretary of Agriculture.*

6875. Adulteration and misbranding of Dolomol-Calomel and Dolomol-Iodoform. U. S. * * * v. Pulvola Chemical Co., a corporation, Plea of guilty. Fine, \$25. (F. & D. No. 9231. I. S. Nos. 3913-p, 3914-p.)

On November 14, 1918, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Pulvola Chemical Co., a corporation, Jersey City, N. J., alleging shipment by said company, in violation of the Food and Drugs Act, on or about February 21, 1918, from the State of New Jersey into the State of New York, of quantities of articles, labeled in part "Dolomol-Calomel," and "Dolomol-Iodoform," which were adulterated and misbranded.

Analyses of samples of the articles by the Bureau of Chemistry of this department showed that the Dolomol-Calomel contained 10.99 per cent of calomel, and that the Dolomol-Iodoform contained 7.09 per cent of iodoform.

Adulteration of Dolomol-Calomel was alleged in the information for the reason that its strength and purity fell below the professed standard and quality under which it was sold, in that it was sold as a product which contained 25 per cent of calomel, whereas, in truth and in fact, it contained less than 25 per cent of calomel, to wit, approximately 10.99 per cent of calomel.

Misbranding of the article was alleged for the reason that the statement, to wit, "Calomel 25 Per Cent," borne on the labels attached to the cans containing the article, regarding it and the ingredients and substances contained therein, was false and misleading in that it represented that the article contained no less than 25 per cent of calomel, whereas, in truth and in fact, it contained less than 25 per cent of calomel, to wit, approximately 10.99 per cent of calomel.

Adulteration of Dolomol-Iodoform was alleged for the reason that its strength and purity fell below the professed standard and quality under which it was sold in that it was sold as a product which contained not less than 10 per cent of iodoform, whereas, in truth and in fact, it contained less than 10 per cent of iodoform, to wit, approximately 7.09 per cent of iodoform.

Misbranding of the article was alleged for the reason that the statement, to wit, "Iodoform * * * 10 Per Cent," borne on the labels attached to the cans, was false and misleading, in that it represented that the article contained not less than 10 per cent of iodoform, whereas, in truth and in fact, it contained less than 10 per cent of iodoform, to wit, approximately 7.09 per cent of iodoform.

On December 2, 1918, the defendant company entered a plea of guilty to the information, and the court imposed a fine of \$25.

C. F. MARVIN, *Acting Secretary of Agriculture.*